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Mayor Charles Henderson called the meeting to order at 8:30 a.m.

PRESENT: Board members Warren Beville, Mayor Henderson; Clerk-Treasurer Jeannine Myers; City Attorney Shawna Koons-Davis; and Director of Engineering Paul Peoni.
Board member Kevin Hoover was not in attendance.

Mr. Beville moved to accept the minutes of the regular session of July 20th as presented. Second by the Mayor. Vote: Ayes.

Robyn Mulinaro of 1213 Winston Court had sent a request at the last meeting to encroach an easement for installation of a fence. The matter was continued until today's meeting so that Engineering staff could go to the site and review the plans again. Mr. Peoni explained the recommendation to deny as follows:

- 1) There is an existing concrete storm sewer that runs along a majority of this property line.
- 2) The depth of the storm sewer ranges from 8 inches to 3.5 feet. It is felt that the storm sewer may be damaged with the installation of this fence. We have been informed that the depth of the post to be installed would be down 3 feet.
- 3) Finally, access to the storm sewer would be blocked by the fence. If the City needs access to the pipe or easement, this is just an encroachment we should not have to encounter. The situation has caused us problems in several older neighborhoods.

Mr. Beville moved to deny the request per Mr. Peoni's memo. Second by the Mayor. Vote: Ayes. Motion carried.

Max Cooper of Projects Plus, for Precedent South Business Center, Section 1, Block 6, Lot 6C, asked for acceptance of performance bonds and execution of the plat. All performance bonds are in the proper form and for the proper amount. Mayor Henderson moved to:

- 1) Accept performance bond #5022883 from Bond Safeguard Insurance Company in the amount of \$264 for the installation of the sanitary sewer at Precedent South Business Center, Section 1, Block 6, Lot 6C.
- 2) Accept performance bond #5022884 from Bond Safeguard Insurance Company in the amount of \$3,080 for the installation of the concrete curbs in the public right-of-way at Precedent South Business Center, Section 1, Block 6, Lot 6C.
- 3) Accept performance bond #5022885 from Bond Safeguard Insurance Company in the amount of \$15,385 for the installation of the stone base, asphalt base and asphalt binder in the public right-of-way at Precedent South Business Center, Section 1, Block 6, Lot 6C.
- 4) Accept performance bond #5022886 from Bond Safeguard Insurance Company in the amount of \$930 for the installation of the asphalt surface in the public right-of-way at Precedent South Business Center, Section 1, Block 6, Lot 6C.
- 5) Accept performance bond #5022887 from Bond Safeguard Insurance Company in the amount of \$15,646 for the installation of the sidewalks in the public right-of-way at Precedent South Business Center, Section 1, Block 6, Lot 6C.
- 6) Accept performance bond #5022888 from Bond Safeguard Insurance Company in the amount of \$680 for the installation of the signs & monuments at Precedent South Business Center, Section 1, Block 6, Lot 6C.
- 7) Accept performance bond #5022889 from Bond Safeguard Insurance Company in the amount of \$715,977 for the installation of the private

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and public dirtwork and storm sewers at Precedent South Business Center, Section 1, Block 6, Lot 6C.

- 8) Accept performance bond #5020049 from Bond Safeguard Insurance Company in the amount of \$82,643 for the installation of the erosion control at Precedent South Business Center, Section 1, Block 6, Lot 6B.
- 9) Execute the final plat, all contingent upon:
 - a. Final review and approval of the plat by the Engineering and Planning Departments. Engineering will hold the plat.

Second by Mr. Beville. Vote: Ayes.

Concerning Precedent South Business Center, Section 1, Block 3, Mr. Cooper requested acceptance of improvements, acceptance of maintenance bonds and release of performance bonds. Mr. Peoni confirmed that there has been a final field inspection and all items appear to have been satisfactorily installed. All maintenance bonds are in the proper form and for the proper amount. The Engineering Department has received acceptable paper as-builts. Mr. Beville moved to:

- 1) Accept the sanitary sewers at Precedent South Business Center, Section 1, Block 3.
- 2) Accept three (3) year maintenance bond #5020050 from Bond Safeguard Insurance Company in the amount of \$2,976 for the sanitary sewers at Precedent South Business Center, Section 1, Block 3.
- 3) Release performance bond #5019976 from Bond Safeguard Insurance Company in the amount of \$14,877 for the installation of the sanitary sewers at Precedent South Business Center, Section 1, Block 3.
- 4) Accept the dirtwork and storm sewers at Precedent South Business Center, Section 1, Block 3.
- 5) Accept three (3) year maintenance bond #5022876 from Bond Safeguard Insurance Company in the amount of \$62,912 for the dirtwork and storm sewers at Precedent South Business Center, Section 1, Block 3.
- 6) Release performance bond #5019974 from Bond Safeguard Insurance Company in the amount of \$314,559 for the installation of the dirtwork and storm sewers at Precedent South Business Center, Section 1, Block 3, all contingent upon:
 - a. Receipt of two (2) sets of mylar as-builts.

Second by the Mayor. Vote: Ayes.

Indiana Wesleyan University (IWU) was next on the agenda. Shawn Matter represented them to discuss the Sewer Availability Fee (SAF) and stress that their usage differs from what might be expected in an institution of higher learning. A handout gave the average classroom usage and size. Another point was that current calculation of the SAF uses an average of 44.75 occupants per classroom which is more than three times the current enrollment, and nearly three times the average for all regional centers. No adult programs will have more than 30 students. They are requesting a calculation of the SAF that is commensurate with their average or actual enrollment. In addition, IWU welcomes a yearly review to ensure its enrollment hasn't outpaced the SAF for which it has paid. Mr. Peoni described how the calculations worked for existing schools, but noted that this is a new facility that is not in the system. Calculations were based on maximum potential usage, he said, and figured (as in the Indiana Building Code) 1 person per 20 square feet for the general classroom. Staff then arrived at 44 students per room and multiplied by 25 gallons per day per pupil (based on a secondary school as the chart shows in the ordinance). Counsel agreed that staff has to follow the ordinance and figure maximum potential

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usage. Consultant Pat Sherman suggested the possibility of handling the matter as some dental offices, putting an amount in escrow. Mr. Sherman would work with the Board of Public Works & Safety, engineering and legal staff to review the ordinance and consider amendments. Mr. Matter reiterated that their usage of the facility differs greatly from the standard educational use. It was pointed out that the Indiana Building Code does not classify higher education as an educational use, but lists it as a business use. Counsel noted that staff does not reference the Building Code classifications to identify and determine what the use of a project is for SAF purposes. In the case of dental offices, where Bulletin 13 is to be revised, staff has required that dentists post a guarantee for the difference between what they think they should pay, based on the future revised Bulletin 13, and what they are required to pay under our ordinance. Mr. Matter commented that IWU has been operating in the City limits since 1992, and the building of a new structure is an effort on IWU's part to establish a permanent investment in the community. He stated that the SAF that was calculated based on the code is punitive and forces IWU to pay for a service that will never be used. After more discussion, Mayor Henderson moved to direct staff to meet with IWU representatives to review the SAF calculation that may be due and payable and authorize staff to calculate an amount to be posted in escrow in a form that is acceptable and agrees with past practice. Second by Mr. Beville. Vote: Ayes. Motion carried.

Regarding IWU's request to accept performance bonds and accept their Inspection & Testing Agreement, Mayor Henderson moved to:

- 1) Accept a performance guarantee in the amount of \$83,040.05 for the installation of the dirtwork and storm sewers at the Indiana Wesleyan University site.
- 2) Accept a performance guarantee in the amount of \$6,525.20 for the installation of the erosion control at the Indiana Wesleyan University site.
- 3) Accept the Inspection & Testing Agreement for all improvements except sanitary sewer and ratify acceptance of the 50% upfront fee, all contingent upon:
 - a. Receipt and approval of the performance guarantees by both the Engineering and Law departments.

Second by Mr. Beville. Vote: Ayes.

For the Calvary Baptist Church parking lot expansion, their detention waiver request was discussed first. Mr. Peoni explained that they propose underground detention because of space limitations on the site and the Engineering Department is in agreement with that. He has studied the calculations and would like to have a final review. Mayor Henderson moved to approve the detention waiver request, based on the approval of the Director of Engineering. Second by Mr. Beville. Vote: Ayes.

Calvary Baptist Church is also asking for acceptance of performance bonds and acceptance of the Inspection & Testing Agreement for their parking lot expansion project. Mr. Beville moved to:

- 1) Accept a performance guarantee in the amount of \$113,136.87 for the installation of the dirtwork and storm sewers at the Calvary Baptist Church Parking Lot Expansion site.
- 2) Accept a performance guarantee in the amount of \$2,368.85 for the installation of the erosion control at the Calvary Baptist Church Parking Lot Expansion site.
- 3) Accept a performance guarantee in the amount of \$41,811 for the installation of the street improvements in the public right-of-way at the Calvary Baptist Church Parking Lot Expansion site.

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- 4) Accept a performance guarantee in the amount of \$5,445 for the installation of the sidewalks in the public right-of-way at the Calvary Baptist Church Parking Lot Expansion site.
- 5) Accept the Inspection & Testing Agreement for all improvements except sanitary sewer and accept the 50% upfront fee, all based upon:
 - a. Receipt and approval of the performance guarantees by both the Engineer and Law departments.
 - b. Receipt and approval of the Inspection & Testing Agreement by both the Engineering and Law departments.

Second by Mayor Henderson. Vote: Ayes.

Ken Zumstein of J. Greg Allen & Associates, on behalf of Alden Place Subdivision, asked for acceptance of the sidewalks, acceptance of the associated maintenance bond, and release of the performance bond. Mr. Peoni confirmed that all sidewalks appear to have been satisfactorily installed. The maintenance bond is in the proper form and for the correct amount. Mayor Henderson moved to:

- 1) Accept all of the sidewalks in the Alden Place Subdivision.
- 2) Accept three (3) year maintenance bond #5022879 from Bond Safeguard Insurance Company in the amount of \$29,350 for all of the sidewalks in Alden Place Subdivision.
- 3) Release performance bond #400SK6290 from United States Fidelity and Guaranty Company in the amount of \$146,749 for the installation of all the sidewalks in Alden Place Subdivision.

Second by Mr. Beville. Vote: Ayes.

For Pinehurst Condominiums, Mr. Zumstein asked for execution of the as-built sub-plat for lots #1 and #25. Mr. Peoni told the Board that the review is not final and that Engineering would hold the plat. Mr. Beville moved to:

- 1) Accept the amended final as-built sub-plat for lots #1 and #25 at Pinehurst Condominium, as based upon:
 - a. Final review and approval of the sub-plat by the Engineering and Planning departments.

Second by Mayor Henderson. Vote: Ayes.

Next Mr. Zumstein discussed custom street and traffic signage for Brighton Estates, Section 1 and Brighton Subdivision. A handout included copies of the proposed signage. Mr. Zumstein told the Board the actual blade in the signage would meet City standards but they would like to install custom posts. A copy of the covenants was handed to the Board, as well, which states that signage in the common areas will be maintained by the Homeowners' Association. Mayor Henderson moved to allow Brighton Estates, Section 1 and Brighton Subdivision to use custom street and traffic signage posts as described in the handout, with the understanding that the Homeowners' Association or the developer are responsible for maintaining those in the right-of-way and with additional language as approved by the Law and Engineering departments. Second by Mr. Beville. Vote: Ayes.

Ben Kuhn of Mann Properties came forward to represent Brookhaven Subdivision in discussing an amendment to the 15 Year Law Agreement to revise costs of construction for recoupment. The City Attorney confirmed that the Sanitation Superintendent has approved the format, which does include items for which they can be reimbursed. The Mayor then moved to approve the Amendment to the 15 Year Law Agreement with final approval of the details by staff, direct the City Attorney to prepare the Amendment, and authorize the Mayor to sign on the Board's behalf. Second by Mr. Beville. Vote: Ayes.

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For Brookhaven Subdivision, Section 2, Mr. Peoni explained that there are three offsite plat-over sanitary sewer easements. They have been reviewed, and the body of the easements was prepared by the Law Department. Everything appears to be in order. Mr. Beville moved to:

- 1) Accept three (3) offsite plat-over sanitary sewer easements for Brookhaven Subdivision, Section 2.

Second by Mayor Henderson. Vote: Ayes.

Architect John Johnston represented the proposed CarX Service Center at Menards Commercial Subdivision, Lot 2 to ask for encroachment of a sanitary sewer easement. Mr. Peoni discussed the handout, which showed the location of the dumpster, the pavement and landscaping to be installed. The sanitary sewer is not quite 5 feet deep. Mr. Peoni indicated that nothing would be placed directly over the sewer, except for the parking lot and one point along the curb. Plan Commission approval included a condition of appearing before the Board. Mr. Johnston told the Board that they would commit to being responsible if the dumpster would have to be removed. Mayor Henderson moved to allow the encroachment of the sanitary sewer easement on Menards Commercial Subdivision, Lot 2 for the CarX Service Center with staff preparing the documentation to be approved by staff and signed by the Mayor. Second by the Mr. Beville. Vote: Ayes.

Bob McWeeney of Arthur J. Gallagher Risk Management Services requested an amendment to the Insurance Compensation Agreement. He explained that when he met with the City Attorney a few months ago, she expressed her displeasure with the service agreed to in the contract. The company is paid in three increments, based on their performance. The initial \$15,000 payment was done at renewal in April 2006. As he is new to the account, Mr. McWeeney is asking for an extension for the second payment. After looking at Ms. Koons-Davis' summary in her memo, Mr. Beville moved that the request be denied. Second by the Mayor, for point of discussion. Mr. McWeeney indicated that the contract binds him into delivering items, such as policies, over which he has no control. Another example is loss runs, which he pointed out are produced by the insurance carrier. He went on to discuss what the broker can control. After more discussion, which included Todd Petty from the audience, the Mayor indicated that he would like to better understand the issue and asked for a continuance until the next meeting. The Mayor moved for a continuance with second by Mr. Beville. Vote: Ayes.

From the audience Mick English came forward, accompanied by Tracy Yeager, to request that the apartment building (Meridian Street Apartments at 611 N. Meridian) owned by Ms. Yeager be allowed to connect downspouts to the City's storm sewer, which is adjacent to her property. It is a 12-unit apartment building. Ms. Yeager gave a brief history and described the drainage problem. The buildings are having water problems in the lower levels, and hopefully this will correct the problem. Mr. Peoni said he would like to make sure of the drainage flow and that the system can handle the runoff. He then indicated he would like to see the downspouts connected to a manhole, possibly in the southwest corner of the property, and would like to have invert elevations obtained. Mr. Peoni recommends that they be required to get a permit and post the required guarantee. Mr. Beville moved that they be allowed to proceed, with staff having the authority to approve the plan, with permits and bonding. Second by the Mayor. Vote: Ayes.

Sanitation Superintendent Keith Meier then discussed the Eastside Interceptor, Phase I, which runs parallel with Graham Road between County Line and Main Street. Stubs were provided east and west for future development out to Graham Road; the stubs did not go under Graham Road. With the Graham

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Road improvements and widening, Mr. Meier would like the stubs extended under the road and the extensions be coordinated with the Graham Road project. Mr. Beville moved to approve the sewer extensions under Graham Road as described, subject to final approval of the proposal by United Consulting Engineering. Mr. Meier estimated the cost at \$23,500. Second by Mayor Henderson. Vote: Ayes.

Mr. Meier next brought up Bridge 607 just east of the railroad on Main Street. A sanitary sewer line runs along the edge of Main Street, and there is a 15" sanitary sewer crossing at Creek Street. The County will be doing bridge work, and Mr. Meier said Sanitation is considering replacing the 60-year-old clay pipe. Mr. Beville moved to allow Sanitation Field to get the pipe replaced at bridge 607 on Main Street, working with the coordinator of the bridge project. Second by the Mayor. Vote: Ayes.

Mr. Meier next asked for a Single Parcel Sewer Service Agreement for O.S. and E.R. Kent at 100 Leaning Tree Road – Windsong, Section 4. The subdivision is on a septic system and there have been problems. Mayor Henderson moved that staff be authorized to draw up a Single Parcel Sewer Service Agreement for O.S. and E. R. Kent at 100 Leaning Tree Road and authorize the Mayor to sign. Second by Mr. Beville. Vote: Ayes.

On her Status of Tasks, Ms. Koons-Davis brought up the payment dispute with Surplus Lab, LLC regarding the sale of Police Department lab equipment. This was authorized at the April 21, 2005 Board meeting for \$7,667. In July 2005, Surplus Lab stopped payment on its check and on August 18, 2005 the Board authorized the City Attorney to take all action deemed appropriate to collect any money due from Surplus Lab. In working with the Police Chief and Police Department, counsel has learned that software was missing and possibly some cables, as asserted by Surplus Lab. The Police Department states that it tried to contact Surplus Lab a few weeks following the sale to notify the company that we had the software and would forward, if wanted. To avoid the expense of litigating and mediating this matter, the City Attorney and Surplus Lab propose to settle the matter for payment to the Police Department in the amount of \$3,583 – roughly the original purchase price less the amount spent by Surplus Lab to replace the items the lab claims it did not receive. The Police Chief recommends that the settlement be approved. Mr. Beville moved to approve settling the payment dispute with Surplus Lab, LLC regarding the sale of Police Department DNA lab equipment in the amount of \$3,583, to direct the City Attorney to prepare an appropriate Mutual Release and Settlement Agreement with terms and conditions acceptable to the Mayor, and to authorize the Mayor to sign the Mutual Release and Settlement Agreement in the Board's behalf. Second by the Mayor. Vote: Ayes.

Mr. Beville moved to accept the claims as presented through August 10th. Second by Mayor Henderson. Vote: Ayes.

With no further business, the meeting adjourned at 9:55 a.m.

Charles E. Henderson, Mayor

Jeannine Myers, Clerk-Treasurer